

CHAPTER 4

AGENCY PROCESSING OF FORMAL COMPLAINTS

I. AGENCY SHALL ACKNOWLEDGE FORMAL COMPLAINT

Immediately upon receipt of a formal complaint of discrimination, the agency shall acknowledge receipt of the complaint in writing. The acknowledgement shall also inform the complainant of the date on which the complaint was filed and should inform the complainant of the issues alleged. Note that, if the complaint is mailed, the date of filing is the postmark date, not the date the agency received the complaint. The acknowledgement is not appealable. The agencies must also inform the complainant of the issue(s) to be investigated and, if appropriate, that the complaint, or a portion of the complaint, is dismissed. This may be done simultaneously with the acknowledgement.

Copies of the acknowledgement and all subsequent actions on the complaint should be mailed or delivered to the complainant's representative.

II. THE AGENCY SHALL ALSO PROVIDE OTHER INFORMATION AND NOTICE OF RIGHTS

A. Agency Shall Inform the Complainant of the Agency's Obligations

1. To Investigate in a Timely Manner

The obligation to investigate in a timely manner. The investigation must be factually complete, impartial and finished within **one hundred and eighty (180) days** of filing the complaint or within the time period contained in an order from the Office of Federal Operations on an appeal from a dismissal pursuant to section 1614.107, unless the EEO Office or designee and the complainant agree in writing to an extension of not more than **ninety (90) days**. See § 1614.108(e).

2. To Process Mixed Cases Timely

The obligation to process mixed cases in a timely manner. With regard to mixed case complaints, if a final decision is not issued on a mixed case complaint within **one hundred and twenty (120) days** of the date of filing, the complainant may appeal to the Merit Systems Protection Board (MSPB) at any time thereafter pursuant to 5 C.F.R. § 1201.154(b)(2) or may file a civil action as provided in section 1614.310(g), but not both. *See* § 1614.302(d)(1).

3. Unilateral Extension for Sanitizing Classified Information

The agency may, after providing notice to the complainant, unilaterally extend the time period or any period of extension for no more than 30 days where it must sanitize a complaint file that may contain information classified pursuant to Executive Order 12356 or successor orders as secret in the interest of national defense or foreign policy.

B. Agency Shall Inform Complainant of His/Her Rights

The agency shall ensure that all rights enumerated in Chapters 2 and 3 are provided to every complainant. In addition, the agency shall inform the complainant of the following:

1. The Right to Hearing

The complainant has the right to request a hearing before an EEOC administrative judge (AJ) in a non-mixed case after **180 calendar days** from the filing of a formal complaint or after completion of the investigation, whichever comes first.

2. The Right to Appeal

The complainant has the right to appeal the final decision or dismissal of all or a portion of the complaint.

- a. The notice shall inform the complainant that (s)he may appeal within **thirty (30) days** by mail to:

Equal Employment Opportunity Commission
Office of Federal Operations
P.O. Box 19848
Washington D. C. 20036

or hand deliver to:

Equal Employment Opportunity Commission
Office of Federal Operations
Federal Sector Programs
1801 L Street N.W.
Washington, D.C. 20507

or send facsimile to:

(202) 663-7022.

- b. The notice shall provide the information at 29 C.F.R. 1614.403 (a)-(d) (Use of appeal form EEOC Form 573, content of petition, service of copies on agency EEO director, and certification of delivery).
- c. With regard to a mixed case, if the complainant is dissatisfied with the agency's final decision on the mixed case complaint, the complainant may appeal the matter to the MSPB, not the EEOC, within twenty (20) days of receipt of the agency's final decision.

3. The Right to File a Civil Action

The complainant has the right to file a civil action in Federal district court on matters raised in the administrative process:

- a. Within **ninety (90) days** of receipt of an agency final decision on an individual or class complaint if no appeal has been filed;
- b. After **one hundred and eighty (180) days** from the date of filing an individual or class complaint if an appeal has not been filed and a final decision has not been issued;
- c. Within **ninety (90) days** of receipt of the Commission's final decision on appeal; or
- d. After **one hundred and eighty (180) days** from the date of filing an appeal with the Commission if there has been no final decision by the Commission.

4. See chapter 2, attachment E for detailed list.

III. AGENCY DISMISSAL PROCESS

A. Agency Should Process Certain Dismissals Expeditiously

To conserve program resources and program integrity, certain dismissals should be processed expeditiously. Following are types of dismissals which should be made early in the administrative process:

1. Untimely Counseling Contact

- a. The complaint raises a matter that has not been brought to the attention of a counselor and is not like or related to a matter that was brought to the attention of a counselor.
[§ 1614.107(b)].
- b. The aggrieved person did not contact an EEO counselor within **forty-five (45) days** of the discriminatory event or within **forty-five (45) days** of the effective date of the personnel action [29 C.F.R. § 1614.105(a)(1)], and

- (1) The aggrieved person did not show that the **forty-five (45) day** contact period should be extended pursuant to section 1614.105(a)(2). In other words, (s)he could not establish that (s)he was not notified of the time limits and was not otherwise aware of them, or did not know and reasonably should not have known that the matter or personnel action occurred or that despite due diligence was prevented by circumstances beyond his/her control from contacting a counselor within the time limits, or for other reasons considered sufficient by the agency or the Commission, and
- (2) The aggrieved person cannot show other equitable circumstances that mitigate untimely contact. Time limits are subject to waiver, estoppel and equitable tolling under section 1614.604(c).

2. Untimely Filing of the Formal Complaint

The aggrieved failed to file a formal complaint within **fifteen (15) days** of the counselor's notice of right to file a formal complaint in an individual complaint [§ 1614.105(d)] or in a class complaint [§ 1614.204(c)].

3. Failure to State a Claim

The aggrieved person failed to state a claim under section 1614.103. A claim not covered by EEO statutes should be dismissed early. Also, where the improper agency is named, an early dismissal pursuant to section 1614.106(a) is expected.

B. All Agency Dismissals Must Be Accompanied by Reasons for the Action and Must Cite Section and Subsection of the Commission's Regulations

Following are additional bases for dismissal under 29 C.F.R. Part 1614:

1. The complaint states the same claim that is pending before or had been decided by the agency or Commission except in those cases where a class action complaint is pending.¹

[29 C.F.R. § 1614.107(a)]

2. The complainant files a civil action concerning the same matter, at least **one hundred and eighty (180) days** after (s)he filed his/her administrative complaint.

[29 C.F.R. § 1614.107(c)]

3. The same matter has been decided by a United States district court or court of appeals and the complainant was a party to the lawsuit.

[29 C.F.R. § 1614.107(c)]

4. The complainant has raised the matter in a negotiated grievance procedure that permits allegations of discrimination, indicating an election to pursue a non-EEO process.

[29 C.F.R. § 1614.107(d)]

5. The complainant has elected to appeal the matter to the Merit Systems Protection Board, rather than file a mixed case complaint under section 1614.302.

[29 C.F.R. § 1614.107(d)]

¹ In that case, an individual complaint will be subsumed under the class complaint.

6. The complaint alleges that a proposal to take or a preliminary step in taking a personnel action is discriminatory.²

[29 C.F.R. § 1614.107(e)]

7. The complaint is moot.

[29 C.F.R. § 1614.107(e)]

8. The complainant cannot be located provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within **fifteen (15) days** to a notice of proposed dismissal sent to his or her last known address.

[29 C.F.R. § 1614.107(f)]

9. The complainant has failed to respond to a written "request to provide relevant information or to otherwise proceed" within **fifteen (15) days** of receipt provided that the request contained notice of the proposed dismissal and further provided that there is otherwise insufficient available information to adjudicate the matter.

[29 C.F.R. § 1614.107(g)]

10. The complainant refuses, within **thirty (30) days** of receipt of an agency offer of settlement, to accept the offer, providing that it is an offer of full relief containing a certification from the agency's EEO Director, chief legal officer, or designee reporting directly to the EEO Director or chief legal officer, that the offer constitutes full relief, and providing further that the offer gave notice that failure to accept within **thirty (30) days** would result in dismissal of the

² If the individual alleges, however, that the preliminary step was part of a pattern of harassing the individual for a prohibited reason, the complaint cannot be dismissed under this section because the preliminary step has already affected the employee.

complaint. See section 1614.501 for appropriate relief. See also Chapter 9 on full relief and Handout at Appendix B to Chapter 9.

[29 C.F.R. § 1614.107(h)]

C. Processing of Partially Dismissed Complaints

Complainants dissatisfied with the agency's dismissal of all or part of the complaint can immediately appeal from the agency's dismissal. Where an appeal from a partial dismissal is filed, and the dismissal is reversed by the EEOC's Office of Federal Operations, the matter will be sent back to the agency for completion of the investigation. The time frame for completing the investigation of the accepted portion of the complaint will be stayed pending a decision on the appeal. Agencies may, but are not required to investigate the accepted portions of the complaint during this time period.

When, on appeal, the dismissal of a portion of a complaint is upheld but the remainder of the complaint is to be processed administratively, the EEOC does not intend to force the complainant to proceed to court on the dismissed portion at that time. The complainant can wait until a final decision is issued by the agency or the EEOC on the merits of the remainder of the complaint and will have **90 days** from receipt of that decision to file in Federal district court.

D. Allegations of Dissatisfaction Regarding Processing of Pending Complaints

If a complainant is dissatisfied with the processing of his/her pending complaint, whether or not it alleges prohibited discrimination as a basis for dissatisfaction, (s)he should be referred to the agency official responsible for the quality of complaints processing. Agency officials should earnestly attempt to resolve dissatisfaction with the complaints process as early and expeditiously as possible.

The agency must process complaints alleging discrimination pursuant to part 1614. Where an aggrieved person or participant in the EEO complaints process alleges that (s)he is treated differently or that (s)he is being adversely affected by a policy or practice having a discriminatory effect on

the processing of his/her complaint on a basis protected by the laws which the EEOC enforces, the aggrieved person must be provided EEO counseling and the opportunity to file a formal complaint.

IV. INVESTIGATIONS SHALL BE CONDUCTED BY THE AGENCY AGAINST WHICH THE COMPLAINT HAS BEEN FILED.

A. Agency Retains Responsibility

An agency may contract out an investigation or may arrange for another agency to conduct the investigation, but must remain responsible for the content and timeliness of the investigation.

B. Investigations Must Be Finished Timely

Investigations must be finished within **one hundred and eighty (180) days** of filing a complaint or within the time period contained in an order from the Office of Federal Operations to investigate a complaint following an appeal from a dismissal, unless the EEO Officer or designee and the complainant agree in writing to an extension of not more than an additional **ninety (90) days**.

C. Investigation Shall be Completed in a Manner Consistent with Chapter 5 of this Directive

D. What Must Be Done for an Investigation to Be Considered Complete

A timely completed investigation means that within the applicable time period:

1. the complaint must be investigated in a manner consistent with Chapter 5;
2. copies of the investigative file, including a summary³ of investigation must be provided to the complainant(s); and

³ See Chapter 5 of this Management Directive for the nature and content of a investigative summary.

3. a **thirty (30) day notice** must be given to the complainant informing him of his/her right to request a hearing, if it is not a mixed case, or of the right to request an immediate final decision by the agency pursuant to section 1614.110.

V. FINAL DECISIONS

A. Final Decisions Must be Issued Within Sixty (60) Days

The agency shall issue a final decision within **sixty (60) days** of receiving notice that a complainant has requested an immediate decision from the agency; within **sixty (60) days** of the end of the 30-day period for requesting a hearing, if the agency has not received a timely request; or within **sixty (60) days** of receiving the findings and conclusions of an administrative judge.

B. Final Decisions Shall Include the Following:

1. findings on the merits of each issue in the complaint;
2. appropriate remedies and relief in accordance with subpart E of part 1614 when discrimination is found;
3. notice of right to appeal to the Equal Employment Opportunity Commission (EEOC Form 573, Notice of Appeal/Petition to be attached);
 - If a mixed case, notice of right to appeal to the MSPB (not the EEOC) within twenty (20) days of receipt of the agency final decision.
4. notice of right to file a civil action in Federal district court;
5. the name of the proper defendant in any such lawsuit; and,
6. the applicable time limits for appeals and lawsuits.